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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/658,034	09/09/2003	Jean-Pascal Zambaux	ATMI-658	2051
25559	7590	11/15/2004	EXAMINER	
ATMI, INC. 7 COMMERCE DRIVE DANBURY, CT 06810			NOLAN, SANDRA M	
			ART UNIT	PAPER NUMBER
			1772	

DATE MAILED: 11/15/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/658,034

Applicant(s)

ZAMBAUX, JEAN-PASCAL

Examiner

Sandra M. Nolan

Art Unit

1772

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 06 October 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 14-19 and 23-38 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 14-19 and 23-38 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Claims***

1. Claims 14-19 and 23-38 are pending. In the response dated 06 October 2004, claims 1-13 and 20-22 were cancelled and claims 29-38 were added.

### ***Election/Restrictions***

2. Applicant's election without traverse of Group III (claims 14-19 and 23-28) in the 06 October 2004 reply to the 13 September 2004 office action, is acknowledged.

### ***Double Patenting***

3. Applicant is advised to maintain clear lines of distinction between the claims of this application and those of Application Serial Nos. 10/684,932 and 10/665,871, which contain claims covering connectors/bags having similar features to those of the kits and apparatuses claimed here.

### ***Claim Rejections - 35 USC § 103***

4. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:
  1. Determining the scope and contents of the prior art.
  2. Ascertaining the differences between the prior art and the claims at issue.
  3. Resolving the level of ordinary skill in the pertinent art.
  4. Considering objective evidence present in the application indicating obviousness or nonobviousness.
5. Claims 14-19 and 23-38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Herbert (US 4,561,110) in view of Merrill et al (US 2001/0027345A1) and Muheim (US 3,575,225).

Herbert teaches bag/connector combinations for storing medical liquids (abstract; Figure 1). The bag is made of polyethylene (col. 12, lines 59-60) and can be heat sterilized (col. 4, lines 12-16). The bag may be a laminate (col. 5, lines 50-69).

It fails to teach the particular polymers claimed, the thickness claimed, heat treatment at 253°C, heat treatment for 30 minutes, or indicia-bearing packaging.

Merrill teaches the use of ultra high molecular weight polyethylene (UHMWPE) films (par. 0053) to make medical devices (title). The material is heat sterilizable (par. 0042). The films are transparent (par. 0077).

Muheim teaches the use of UHMWPE (col. 5, line 7) in autoclavable bags (col. 5, lines 31-32) for medical uses (abstract).

The patents are analogous because they all deal with heat sterilizable polyethylenes used in medical applications.

It would have been obvious to one having ordinary skill in the art at the time of the invention to employ the UHMWPE of Merrill and Muheim to make the bag/connector combinations of Herbert in order to produce bag/connector having autoclavability and transparency.

The motivation to employ the UHMWPE of Merrill and Muheim to make the bag/connector combinations of Herbert is found at pars. 0042 and 0077 of Merrill, where the sterilizability and transparency of UHMWPE are taught; and at col. 5, lines 31-32 of Muheim, where autoclavability of UHMWPE is taught.

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It is deemed desirable to make bags for medical uses that are heat sterilizable in autoclaves and transparent in order to prevent patients' illness and to insure that the contents of the bags are visible to medical personnel.

The temperature and time parameters for sterilizing the products are sterilized are matters of choice, depending upon how the products will be used.

The thickness of the bags' layers and the way in which the bag/connector products if assembled are matters of design/engineering choice, depending upon the appearance and other properties desired in the products.

The use of indicia/labeling on products is deemed a matter of design choice.

**Conclusion**

Any inquiry concerning this communication should be addressed to Sandra M. Nolan, at telephone number 571/272-1495. She can normally be reached Monday through Thursday, from 6:30 am to 4:00 pm, Eastern Time.

If attempts to reach the examiner are unsuccessful, her supervisor, Harold Pyon, can be reached at 571/272-1498.

The fax number for patent application documents is 703/872-9306.



S. M. Nolan  
Primary Examiner  
Technology Center 1700

10658034(20041109)